

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARLOS GARCIA (A38-505-829),

Petitioner,

v.

DECISION AND ORDER
04-CV-949S

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

1. Petitioner Carlos Garcia has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, in which he maintains that he derived United States citizenship from his father. (Docket No. 1.) Pending before this Court is Petitioner's motion to lift the stay of removal and for discovery.¹ (Docket No. 13.) On April 30, 2007, Petitioner withdrew his request to lift the stay of removal (Docket No. 15), leaving only his motion for discovery, which the government opposes. For the following reasons, Petitioner's motion for discovery will be denied.

2. Petitioner requests discovery related to his parents' "divorce sentence," their custody settlement, and whether his father ever lost his parental rights. (Docket No. 13.) He also requests that Respondent "furnish/or research" his parents' divorce and custody agreements from the Dominican Republic and provide him with legible copies of any documents obtained. (Docket No. 13.)

3. In connection with its Motion for Summary Judgment, which post-dates Petitioner's discovery request, Respondent filed and served Petitioner with the following

¹ Respondent's Motion for Summary Judgment (Docket No. 18), which is also pending before this Court, will be resolved by separate Decision and Order.

documents in its possession that relate to Petitioner's parents' divorce and custody proceedings: (1) Sworn Statement of Carlos Garcia; (2) Extract of Certificate; (3) Certificate of Extract and Divorce Decree obtained from the Dominican Republic, with translation; (4) typewritten note relating to terms of divorce decree; (5) Statement of Ramon Adelso Garcia; (6) Statement of Gloria M. Nunez; (7) Petitioner's father's 1988 federal income tax return; and (8) Petitioner's father's Application for Naturalization. (Docket No. 21, Exhibits C, D, E, F, I, J, K, M, N.)

4. In light of Respondent's disclosure of this responsive documentation, Petitioner's request for discovery will be denied. Moreover, to the extent Petitioner seeks an order from this Court compelling Respondent to affirmatively seek out documents in support of his claim or to research issues on his behalf, that request is denied. It is Petitioner's responsibility, not Respondent's, to obtain and present any documentation that supports his claims if he believes such documentation exists. Accordingly, Petitioner's motion will be denied in its entirety.

IT HEREBY IS ORDERED, that Petitioner's Motion for Discovery (Docket No. 13) is DENIED.

SO ORDERED.

Dated: March 31, 2008
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge